

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cassandra Fenkel	Team: Squad #6	CCRB Case #: 201801266	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 09/17/2017 2:37 AM	Location of Incident: In front of 88-29 163rd Street	Precinct: 103	18 Mo. SOL 3/17/2019	EO SOL 3/17/2019	
Date/Time CV Reported Sun, 09/17/2017 5:06 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 02/15/2018 11:02 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM William Hannan	18904	958680	103 PCT
2. POM Anthony Mceniry	14127	956077	103 PCT
3. POM Kevin Nicoll	19740	958984	103 PCT
4. POM John Marceda	23202	950819	103 PCT
5. POF Kaitlyn Bazarewski	14200	956423	103 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM James Barrett	09724	955744	103 PCT
2. POM Daniel Velazquez	23338	946364	103 PCT
3. SGT Mark Kosta	01928	949180	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kevin Nicoll	Abuse: Police Officer Kevin Nicoll drew his gun.	
B.POM William Hannan	Force: Police Officer William Hannan used physical force against § 87(2)(b)	
C.POM John Marceda	Force: Police Officer John Marceda used physical force against § 87(2)(b)	
D.POM William Hannan	Force: Police Officer William Hannan hit § 87(2)(b) against the ground.	
E.POM William Hannan	Force: Police Officer William Hannan used physical force against § 87(2)(b)	
F.POM William Hannan	Force: Police Officer William Hannan restricted § 87(2)(b)'s breathing.	
G.POM William Hannan	Discourtesy: Police Officer William Hannan spoke discourteously to § 87(2)(b)	
H.POF Kaitlyn Bazarewski	Force: Police Officer Kaitlyn Bazarewski used physical force against § 87(2)(b)	
I.POM Anthony Mceniry	Force: Police Officer § 87(2)(b) Mceniry used physical force against § 87(2)(b)	
J.POM William Hannan	Abuse: Police Officer William Hannan damaged § 87(2)(b)'s property.	

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)	§ 87(4-b), § 87(2)(g)	

Case Summary

On September 17, 2017, Sgt. Mark Kosta of the 103rd Precinct contacted the IAB Command Center and reported that § 87(2)(b) was injured during his arrest and transported to § 87(2)(b) for pain to his left shoulder. This complaint was received at the CCRB on February 15, 2018.

On September 17, 2017, at approximately 2:37 a.m., § 87(2)(b) was with his friends, § 87(2)(b) and § 87(2)(b) in the vicinity of 88-29 163rd Street in Queens when PO Kevin Nicoll of the 103rd Precinct exited his vehicle and approached § 87(2)(b) with his gun drawn (**Allegation A: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) fled. Sgt. Kosta, along with PO William Hannan, PO § 87(2)(b) Mceniry, PO James Barrett, PO Daniel Velazquez, PO John Marceda, and PO Kaitlyn Bazarewski, all of the 103rd Precinct, responded to the location.

PO Hannan pursued § 87(2)(b) and tackled him to the ground (**Allegation B: Force**, § 87(2)(g)). § 87(2)(b) approximated that he was handcuffed on the sidewalk seconds after the takedown. PO Marceda kicked § 87(2)(b) in his legs (**Allegation C: Force**, § 87(2)(g)). PO Hannan allegedly pushed § 87(2)(b)'s head into the ground and grinded his right cheek against the sidewalk (**Allegation D: Force**, § 87(2)(g)). PO Hannan allegedly punched § 87(2)(b) in the face (**Allegation E: Force**, § 87(2)(g)), kned him in the back (**Allegation E continued**), repeatedly slammed his upper body against the ground (**Allegation D continued**), and knelt on top of § 87(2)(b) restricting his breathing (**Allegation F: Force**, § 87(2)(g)). § 87(2)(b) complained that he could not breath and PO Hannan allegedly ordered him to "shut the fuck up" (**Allegation G: Discourtesy**, § 87(2)(g)). PO Bazarewski and PO Mceniry allegedly punched § 87(2)(b) in the face (**Allegations H – I: Force**, § 87(2)(g)).

§ 87(2)(b) was escorted to a patrol car, at which point he realized his glasses were missing. PO Hannan allegedly told § 87(2)(b) that he broke his glasses (**Allegation J: Abuse of Authority**, § 87(2)(g)).

§ 87(4-b), § 87(2)(g)

§ 87(2)(b) was arrested for § 87(2)(b)

(Board Review 01), § 87(2)(b) § 87(2)(c)

The CCRB obtained video footage of the incident from surveillance cameras outside of 88-29 163rd Street in Queens. The original footage is located in IAs #21-24 (Board Review 03, Board Review 04, Board Review 05, Board Review 06) and summarized in IAs #224-227 (Board Review 07, Board Review 08, Board Review 09, Board Review 10).

The 103rd Precinct was not issued body-worn cameras at the time of this incident.

This case was on DA Hold from May 23, 2018 through February 15, 2019.

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Kevin Nicoll drew his gun.

§ 87(2)(b) (Board Review 11, Board Review 12) testified that at the time of the incident, he was standing outside of 88-33 163rd Street and talking with his friends. § 87(2)(b) wore black jeans, a blue or white shirt, and glasses. Suddenly, PO Nicoll, identified by the investigation, exited a marked patrol car with his gun drawn and walked rapidly toward § 87(2)(b). § 87(2)(b) ran away through a backyard because seeing PO Nicoll with his gun drawn made him nervous. No one else ran aside from § 87(2)(b).

PO Nicoll (Board Review 13) testified that he received a series of radio runs reporting a man with a firearm, shots fired, and a confirmed male shot in the vicinity of 88th Avenue and 163rd Street. There were multiple 911 callers, one of whom described the suspect as a black man wearing black pants, a white shirt with red lettering, a black hat, glasses, and a backpack. Approximately two minutes later, PO Nicoll observed § 87(2)(b) standing outside of an apartment building on 163rd Street between 89th Avenue and Hillside Avenue with two unidentified individuals. PO Nicoll's attention was drawn to § 87(2)(b) because he was a black man wearing black pants, a white shirt with red lettering, a black hat, glasses, and a backpack, thereby fitting the exact description of the suspect. PO Nicoll approached § 87(2)(b) at which point § 87(2)(b) grabbed his waistband and ran toward him. PO Nicoll ordered § 87(2)(b) not to move, but § 87(2)(b) continued to run. PO Nicoll drew his firearm because he feared that § 87(2)(b) might shoot him. § 87(2)(b) ran past PO Nicoll and into a backyard, at which point PO Nicoll holstered his firearm and gave chase.

Event documents (Board Review 14, Board Review 15) and 911 call audio (Board Review 16, Board Review 17) corroborated PO Nicoll's account and confirmed that a caller identified himself as § 87(2)(f), § 87(2)(b) and reported that a black man wearing black pants, a white shirt with lettering, glasses, and a backpack fired shots outside of 89-45 163rd Street and fled on foot toward Hillside Avenue.

NYPD Patrol Guide, Procedure 221-01 (Board Review 18), states that officers may draw or display firearms based on an articulable belief that the potential for serious physical injury is present.

§ 87(2)(g)

Allegation B – Force: Police Officer William Hannan used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) fled when approached by officers and was forcibly brought to the ground by PO Hannan.

Video footage (Board Review 03) recorded by surveillance cameras outside of 88-29 163rd Street depicts § 87(2)(b) emerge from a driveway and run down 163rd Street. Seconds later, PO Hannan exits a patrol car and jumps into § 87(2)(b)'s path. § 87(2)(b) runs directly into PO Hannan, who wraps his arms around § 87(2)(b)'s upper body and throws him onto the ground.

§ 87(2)(b) testified that after he fled from PO Nicoll, he ran up a driveway, into backyards, and back down another driveway onto 163rd Street. As § 87(2)(b) ran toward Hillside Avenue, PO Hannan exited a patrol car and ran toward him. PO Hannan wrapped his

arms around § 87(2)(b)'s upper body like a bear hug and slammed him onto the ground. As a result of this force, § 87(2)(b) sustained scratches to his right shoulder, elbow, and knee along with pain to his left shoulder.

§ 87(2)(b)'s medical records (Board Review 19) reflect that he was transported to § 87(2)(b) while in NYPD custody, where he was diagnosed with a fractured left clavicle. At § 87(2)(b), § 87(2)(b) complained of back pain, unspecified head trauma, and presented with an abrasion on his face. No other injuries or diagnoses were noted. § 87(2)(b)'s medical records described that he was running from officers and was tackled to the ground. § 87(2)(b) could not recall which area of his body initially hit the ground.

PO Hannan (Board Review 20) testified that he responded to a radio run for shots fired and a foot pursuit on 163rd Street. PO Hannan's attention was drawn to § 87(2)(b) who fit the suspect's description, and was running down the sidewalk. Within seconds, § 87(2)(b) attempted to run through PO Hannan. PO Hannan wrapped his arms around § 87(2)(b) and brought him to the ground.

The Threat, Resistance, or Injury Incident Worksheet prepared by PO Hannan (Board Review 21) documented that a forcible takedown was used to apprehend an armed fleeing suspect and in defense of self and members of the public.

According to NYPD Patrol Guide, Procedure 221-02 (Board Review 22), officers may use reasonable force under the circumstances to gain control of a person who is resisting being placed into custody.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation C – Force: Police Officer John Marceda used physical force against § 87(2)(b)

Allegation D – Force: Police Officer William Hannan hit § 87(2)(b) against the ground.

Allegation E – Force: Police Officer William Hannan used physical force against § 87(2)(b)

Allegation F – Force: Police Officer William Hannan restricted § 87(2)(b)'s breathing.

Allegation H – Force: Police Officer Kaitlyn Bazarewski used physical force against § 87(2)(b)

Allegation I – Force: Police Officer § 87(2)(b) Mceniry used physical force against § 87(2)(b)

Video footage (Board Review 03) recorded by surveillance cameras outside of 88-29 163rd Street depicts approximately seven officers surround § 87(2)(b) on the sidewalk seconds after he is brought to the ground by PO Hannan. At approximately the 00:44 minute mark, PO Marceda uses two leg strikes on § 87(2)(b)'s legs. At approximately the 1:02 minute mark, PO Hannan uses two knee strikes on § 87(2)(b)'s back. At approximately the 1:04 minute mark, PO Marceda uses two additional leg strikes on § 87(2)(b)'s legs. At approximately the 2:04 minute mark, PO Hannan uses four knee strikes on § 87(2)(b) though it is unclear where exactly each strike lands. Throughout the footage, the camera's view of § 87(2)(b) is partially

obscured by a tree and by the backs of the officers surrounding him. It is unclear from the footage exactly when § 87(2)(b) is handcuffed, though § 87(2)(b) is ultimately lifted and moved to a different area on the ground at the 2:24 mark. No force is shown or alleged to have occurred after this point and the view of § 87(2)(b) continues to be obscured by a tree, a pole, and the officers backs.

§ 87(2)(b) testified that as PO Hannan brought him to the ground, he reflexively put his arms out in front of him to break his fall and landed with his arms underneath his body. Numerous officers grabbed § 87(2)(b)'s arms and pulled them behind his back. § 87(2)(b) denied that he did anything to prevent officers from pulling his arms out from under him, and denied that he rolled around, kicked his legs, or made any other physical movements. § 87(2)(b) denied that any officer kicked him or stomped on him. One handcuff was placed on § 87(2)(b) at which point he lifted only his head up from the ground. PO Hannan allegedly placed his hand against the left side of § 87(2)(b)'s face and pushed his head into the ground. PO Hannan held his hand against § 87(2)(b)'s face and allegedly grinded § 87(2)(b)'s right cheek against the sidewalk. § 87(2)(b) approximated he was fully handcuffed within five seconds of the initial takedown. After § 87(2)(b) was handcuffed, PO Hannan allegedly punched him on the left side of his face approximately seven times. Between punches, PO Hannan allegedly knelt § 87(2)(b) in his back. PO Hannan allegedly knelt on § 87(2)(b) with one knee on his upper back and one knee on his lower back, which restricted his breathing. § 87(2)(b) stated that he could not breath. § 87(2)(b) attempted to raise himself from the ground to catch his breath, and PO Hannan allegedly slammed his upper body against the ground approximately three times. The final time that PO Hannan slammed him down, § 87(2)(b) felt a sharp pain in his left shoulder. PO Bazarewski and an additional officer, identified by the investigation as PO Mceniry, allegedly punched § 87(2)(b) once in the face. § 87(2)(b) was unable to provide additional context regarding these allegations other than that it occurred "toward the end."

§ 87(2)(b) sustained abrasions to his right cheek, which he attributed to PO Hannan allegedly pushing his head against the sidewalk. § 87(2)(b) also described that he sustained pain in his right thigh, right shin, and a scrape on his right knee, but did not know what force used during the incident caused these injuries.

§ 87(2)(b)'s arrest photograph (Board Review 23) depicts slight discoloration on his right cheek and above his right eyebrow. § 87(2)(b)'s physical condition otherwise appears normal.

§ 87(2)(b)'s medical records from § 87(2)(b) do not note any diagnosable injury aside from the fracture to his left clavicle and an abrasion observed on his face. A cat-scan of § 87(2)(b)'s head and facial area yielded unremarkable results.

In a phone call with the CCRB, § 87(2)(b)'s friend and potential witness, § 87(2)(b) (Board Review 24) stated that he did not see any portion of § 87(2)(b)'s apprehension and only came to the incident location afterwards, at which point he observed officers photographing a backpack and the items inside it.

Despite extensive contact attempts, § 87(2)(b)'s friend and potential witness, § 87(2)(b) was unavailable to the investigation (see IAs for contact attempts).

PO Marceda (Board Review 25) testified that he arrived at the location in response to the radio run for shots fired and the subsequent foot pursuit. PO Marceda observed approximately five officers surrounding § 87(2)(b) and attempting to free his arms as § 87(2)(b) flailed his legs and moved his body side-to-side. An officer yelled that § 87(2)(b) had something in his

hands, which were not visible to PO Marceda, and PO Marceda feared it was a gun given the nature of the radio run. PO Marceda kicked § 87(2)(b) approximately three times in his leg. PO Marceda noted that he used leg strikes because he did not want to be at eye-level with § 87(2)(b) in case he began firing shots. PO Marceda did not recall using any additional leg strikes after this point. After the leg strikes, PO Marceda realized § 87(2)(b) was holding a handful of bullets instead of a gun. PO Marceda then knelt down and held onto one of § 87(2)(b)'s legs to prevent him from kicking until officers pulled his hands into handcuffs. PO Marceda denied seeing PO Hannan, PO Bazarewski, or PO Mceniry use any additional physical force to affect § 87(2)(b)'s arrest. PO Marceda denied that PO Hannan knelt on top of § 87(2)(b)'s back, and denied that he did anything which could have restricted § 87(2)(b)'s breathing.

PO Hannan testified that after he brought § 87(2)(b) to the ground, § 87(2)(b) rolled onto his stomach and held his hands underneath his body, near his waistband. PO Hannan attempted to pull § 87(2)(b)'s arms out from underneath him and knelt next to § 87(2)(b) with his knees on the ground. PO Hannan denied that he ever knelt on top of § 87(2)(b) or did anything which could have restricted his breathing. PO Hannan was unable to gain control of § 87(2)(b)'s arms, as § 87(2)(b) tensed his body and kicked his legs. PO Hannan struck § 87(2)(b) with his knees approximately three times on the side of his hip. However, § 87(2)(b) remained with his arms underneath him. PO Hannan ordered § 87(2)(b) to stop resisting and give his hands. PO Hannan could not recall if § 87(2)(b) was saying anything but denied that he complained of his breathing being restricted. PO Hannan denied that he ever pushed § 87(2)(b)'s head into or against the ground, denied that he punched § 87(2)(b) and denied that he ever slammed § 87(2)(b)'s upper body against the ground. With the assistance of additional officers to pull § 87(2)(b)'s arms out from underneath him, PO Hannan was ultimately able to handcuff § 87(2)(b). PO Hannan denied that he or any other officers used any additional force on § 87(2)(b) in order to do so.

The Threat, Resistance, or Injury Incident Worksheet prepared by PO Hannan (Board Review 21) documented his use of a forcible takedown and knee strike, as attested to in his interview. No other physical force was noted.

PO Bazarewski (Board Review 26) testified that she arrived on scene seconds after PO Hannan's takedown and § 87(2)(b) laid chest-down with his hands underneath his body. PO Hannan grabbed § 87(2)(b)'s arms, attempted to pull them out from underneath him, and ordered § 87(2)(b) to give his hands. However, § 87(2)(b) remained with his arms underneath him. PO Bazarewski placed her knee on § 87(2)(b)'s upper back, near his shoulder blade, for approximately 30 seconds and held him down until additional officers arrived on scene. PO Bazarewski denied that this action could have restricted § 87(2)(b)'s breathing and denied seeing PO Hannan do anything which could have restricted § 87(2)(b)'s breathing. PO Bazarewski did not recall if § 87(2)(b) ever complained about his breathing being restricted. PO Bazarewski denied that she punched § 87(2)(b). PO Bazarewski was ultimately pushed aside by PO Mceniry, at which point her view of § 87(2)(b) was obscured by the number of officers surrounding him. PO Bazarewski denied seeing PO Hannan push § 87(2)(b)'s head into or against the ground, denied that he punched § 87(2)(b) and denied that he slammed § 87(2)(b)'s upper body against the ground.

PO Mceniry (Board Review 27) testified that he and PO Hannan each attempted to grab one of § 87(2)(b)'s arms and pull them behind his back, but were unable to do so as § 87(2)(b) held his arms underneath his body, kicked his legs, and wiggled side-to-side. PO Mceniry placed one knee against § 87(2)(b)'s lower back, near his hip, to prevent him from

getting up and punched § 87(2)(b) approximately four times in his ribs and his lower back. PO Mceniry denied that this action could have restricted § 87(2)(b)'s breathing and denied seeing PO Hannan do anything which could have restricted § 87(2)(b)'s breathing. PO Mceniry denied that he punched § 87(2)(b) elsewhere on his body, such as his face. After approximately two minutes, PO Mceniry and PO Hannan were able to pull § 87(2)(b)'s arms out from underneath him and into handcuffs. PO Mceniry denied seeing PO Hannan push § 87(2)(b)'s head into or against the ground, denied seeing PO Hannan or PO Bazarewski punch § 87(2)(b) and denied seeing PO Hannan slam § 87(2)(b)'s upper body against the ground.

The Threat, Resistance, or Injury Incident Worksheet prepared by PO Mceniry (Board Review 28) documented his use of a hand strikes, as attested to in his interview. The worksheet also documented a forcible takedown and knee strike were used, which PO Mceniry explained to refer to PO Hannan's initial takedown and PO Mceniry's placement of his knee against § 87(2)(b)'s lower back.

No other officers interviewed acknowledged seeing PO Hannan, PO Bazarewski or PO Mceniry use force as alleged by § 87(2)(b). Sgt. Kosta (Board Review 29), PO Barrett (Board Review 30), and PO Nicoll denied seeing PO Hannan push § 87(2)(b)'s head into or against the ground, denied seeing PO Hannan slam § 87(2)(b)'s upper body against the ground, and denied seeing PO Hannan, PO Mceniry, or PO Bazarewski punch § 87(2)(b) in the face. Sgt. Kosta and PO Barrett did not recall if PO Hannan knelt on top of § 87(2)(b)'s back or did anything which could have restrict his breathing, whereas PO Nicoll denied that this occurred. PO Velazquez (Board Review 31) did not recall seeing PO Hannan use physical force as alleged by § 87(2)(b) and did not recall if he did anything which could have restricted his breathing. Sgt. Kosta and PO Barrett denied that § 87(2)(b) made any statements about his breathing being restricted, whereas PO Barrett could not recall.

§ 87(2)(g)

Allegation G – Discourtesy: Police Officer William Hannan spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that he told PO Hannan he could not breath and PO Hannan allegedly ordered him to “shut the fuck up.”

PO Hannan could not recall if § 87(2)(b) said anything during his apprehension and did not recall if he told § 87(2)(b) to “shut the fuck up.”

PO Marceda, PO Bazarewski, PO Mceniry, Sgt. Kosta, PO Nicoll, PO Barrett, and PO Velazquez denied hearing PO Hannan tell § 87(2)(b) to “shut the fuck up.”

§ 87(2)(g)

Allegation J – Abuse of Authority: Police Officer William Hannan damaged § 87(2)(b)'s property.

§ 87(2)(b) testified that officers lifted him up from the ground and escorted him to a patrol vehicle, at which point he realized his glasses were missing. § 87(2)(b) asked for his glasses and PO Hannan allegedly stated that he broke them. § 87(2)(b) was unable to recall when his glasses left his face, but noted that he was not wearing them when PO Hannan allegedly grinded his face against the sidewalk.

PO Hannan testified that after § 87(2)(b) was apprehended, he observed his glasses on the ground near where he had been handcuffed. PO Hannan described that the lenses were cracked and the frames were bent. PO Hannan denied that he saw how § 87(2)(b)'s glasses came to be in this condition and was unaware of anything he or any other officer could have done to damage § 87(2)(b)'s glasses.

PO Nicoll testified that he vouchered § 87(2)(b)'s glasses at the precinct and noticed that the lenses were cracked and the frames were bent. However, PO Nicoll was unaware of how this occurred and denied seeing PO Hannan do anything to damage § 87(2)(b)'s glasses.

No other officers interviewed had any recollection of § 87(2)(b) having glasses. PO Mceniry, PO Barrett, PO Marceda and PO Velazquez denied seeing PO Hannan do anything which could have damaged § 87(2)(b)'s glasses and Sgt. Kosta and PO Bazarewski did not recall.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
[REDACTED]
[REDACTED]
- PO Nicoll has been a member of service for three years and has been a subject in two CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)
[REDACTED]
- PO Hannan has been a member of service for three years and has been a subject in one CCRB complaint and two allegations, none of which were substantiated. § 87(2)(g)
[REDACTED]
- PO Marceda has been a member of service for seven years and has been a subject in three CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)
[REDACTED]
- PO Bazarewski has been a member of service for four years and this is the first CCRB complaint to which she has been a subject.
- PO Mceniry has been a member of service for five years and has been a subject in three CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g)
[REDACTED]

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- A Notice of Claim Inquiry was submitted to the New York City Office of the Comptroller on June 13, 2019, and will be included in the case file upon its receipt (Board Review 34).
- § 87(2)(b) § 87(2)(c)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: #6

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date